

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MADELYN B. BARNES By and on Behalf  
of the United States of America, Relator, and  
By and on Behalf of the State of New York,

Plaintiff,

v.

**NOTICE OF MOTION**

Civil Action No.:  
1:16-cv-0088-JLS

HEALTHNOW NEW YORK INC., D/B/A  
BLUECROSS BLUESHIELD OF WESTERN NEW  
YORK, AND D/B/A BLUESHIELD OF  
NORTHEASTERN NEW YORK, NOW KNOWN AS  
HIGHMARK WESTERN AND NORTHEASTERN  
NEW YORK INC.,

Defendant.

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**PLEASE TAKE NOTICE** that, upon the affidavit of Lisa Burke, sworn to May 25, 2021, and the affidavit of Kim King, sworn to May 24, 2021 with exhibits attached thereto, the declaration of Alan J. Bozer dated May 25, 2021 with exhibits attached thereto, and the Statement of Undisputed Facts dated May 25, 2021, Defendant HealthNow New York Inc., moves this Court for a judgment:

1. Denying dismissing the Second Amended Complaint in its entirety; or
2. Alternatively, dismissing
  - A. Claims concerning the FEP, Medicare and Medicaid; and
  - B. Supplemental state law claims made on behalf of the State of New York or for named or unnamed local governments; and
3. Granting such other and further relief as the Court deems just and proper.

Defendant looks to the Court to set a briefing schedule for all responses and replies as per its rules.

Defendant requests oral argument.

Dated: Buffalo, New York  
May 25, 2021

PHILLIPS LYTLE LLP

By: Alan J. Bozer

Alan J. Bozer

Erin C. Borek

William P. Keefer

Attorneys for Defendant

*HealthNow New York Inc., d/b/a BlueCross  
BlueShield of Western New York, and  
d/b/a BlueShield of Northeastern New York,  
now known as Highmark Western And  
Northeastern New York Inc.*

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TO: All Counsel of Record via ECF